

Calendar No. 177

82D CONGRESS }
1st Session }

SENATE

{ REPORT
No. 185 }

PETER E. KOLESNIKOFF

MARCH 19 (legislative day, MARCH 16), 1951.—Ordered to be printed

Mr. McCARRAN, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 953]

The Committee on the Judiciary, to which was referred the bill (S. 953) for the relief of Peter E. Kolesnikoff, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

AMENDMENT

On page 1, line 6, strike out the figure \$1,000 and insert in lieu thereof the figure, \$766.

PURPOSE

The purpose of the proposed legislation, as amended, is to pay the sum of \$766 to Peter E. Kolesnikoff, of Chelmsford, Mass., in full settlement of all claims against the United States for the damage resulting from a collision on February 1, 1941, involving automobiles owned by the claimant Peter E. Kolesnikoff, and a United States Army truck on Route No. 110, at Westford, Mass.

STATEMENT

H. R. 1874, of the Eighty-first Congress, which involved persons in the same accident as the claimant, was approved by action of the full committee on August 14, 1950, and became Private Law 931 on September 6, 1950.

It appears that on February 1, 1941, at about 5:20 p. m., a four-car collision occurred on Route 110, 1 mile south of the Chelmsford-Westford, Mass., town line. A 1½-ton Army dump truck crashed

into three civilian cars, viz, car A, a 1941 Plymouth sedan owned and operated by Peter E. Kolesnikoff, Chelmsford, Mass.; car B, a Pontiac sedan, owned by Charles Arthur Stewart and operated by John P. Carrigg, both of Lowell, Mass.; and car C, a Ford coach, owned by Stanley Thiffault and operated by Charles H. Sorenson, both of Burlington, Mass. The Army truck, operated by a soldier who had taken it without authority and for a personal mission, was proceeding west at a speed of 35 to 40 miles an hour with its left wheels on the wrong side of the center line of the highway. Cars A, B, and C were proceeding east at a speed of about 30 to 35 miles an hour, closely grouped. The Army truck struck the left front of car A, sideswiped car B, and after colliding head-on with car C came to a stop. Car A, belonging to Mr. Kolesnikoff, was extensively damaged, and it appears that Mr. Kolesnikoff sustained bruises, for the treatment of which he incurred medical expenses in the amount of \$3.

The Department of the Army in its report dated April 19, 1948, stated that the evidence in this case establishes that this accident and the resulting damages sustained by Peter E. Kolesnikoff were not caused by any fault or negligence on his part, but were caused solely by the negligence of the driver of the Army truck involved in said accident in operating his vehicle partly on the wrong side of the highway in the right-of-way of the oncoming civilian automobiles.

Therefore, the committee recommends favorable consideration to the bill.

DEPARTMENT OF THE ARMY,
Washington, D. C., April 19, 1948.

HON. EARL C. MICHENER,
Chairman, Committee on the Judiciary,
House of Representatives.

DEAR MR. MICHENER: Further reference is made to your letter enclosing a copy of H. R. 3359, Eightieth Congress, a bill for the relief of Peter E. Kolesnikoff, and requesting a report on the merits thereof.

This bill would authorize and direct the Secretary of the Treasury "to pay, out of any money in the Treasury not otherwise appropriated, to Peter E. Kolesnikoff, Chelmsford, Massachusetts, the sum of \$1,000, in full satisfaction of his claim against the United States for the damage resulting from a collision, on February 1, 1941, involving automobiles owned by the claimant Peter E. Kolesnikoff and a United States Army truck, on Route Numbered 110, at Westford, Massachusetts."

On February 1, 1941, at about 5:20 p. m., a four-car collision occurred on Route 110, 1 mile south of the Chelmsford-Westford, Mass., town line. A 1½-ton Army dump truck crashed into three civilian cars, viz, car A, a 1941 Plymouth sedan owned and operated by Peter E. Kolesnikoff, Chelmsford, Mass.; car B, a Pontiac sedan, owned by Charles Arthur Stewart and operated by John P. Carrigg, both of Lowell, Mass.; and Car C, a Ford coach, owned by Stanley Thiffault and operated by Charles H. Sorenson, both of Burlington, Mass. The Army truck, operated by a soldier who had taken it without authority and for a personal mission, was proceeding west at a speed of 35 to 40 miles an hour with its left wheels on the wrong side of the center line of the highway. Cars A, B, and C were proceeding east at a speed of about 30 to 35 miles an hour, closely grouped. The Army truck struck the left front of car A, sideswiped car B, and after colliding head-on with car C came to a stop. Car A, belonging to Mr. Kolesnikoff, was extensively damaged, and it appears that Mr. Kolesnikoff sustained bruises, for the treatment of which he incurred medical expenses in the amount of \$3.

In a statement dated January 19, 1948, Raymond T. Osborn, proprietor of Osborn Motors, 59 Central Square, Chelmsford, Mass., said that Mr. Kolesnikoff's automobile, which was damaged in this accident, had been sold to him for the price of \$838; that it was 2 months old when damaged; and that when Mr.

Kolesnikoff traded it in on a new car he was allowed \$125 for it. It, therefore, appears that the claimant sustained a net loss of \$713 on account of the damage to his automobile.

In an affidavit executed on January 20, 1948, Mr. Kolesnikoff stated:

"* * * My left side was bruised and I receive one treatment from Dr. Durstoff, of Chelmsford, Mass. The doctor taped my side and I kept this tape on for about 10 days. I lost no time from work. The doctor's fee amounted to \$3."

The records of the Department of the Army show that the enlisted man who was driving the Army vehicle at the time of this accident had taken such vehicle from a motor pool at Fort Devens, Mass., and off the military reservation without authority and for a personal mission of his own. He was charged by the civilian authorities with operating said vehicle on February 1, 1941, while under the influence of liquor and was convicted of such charge in a civil court at Ayer, Mass., on February 3, 1941, and was sentenced to serve 4 months in the House of Correction at Billerica, Mass. By reason of his conviction in a civil court the soldier was discharged from the Army on March 17, 1941.

The evidence in this case establishes that this accident and the resulting damages sustained by Peter E. Kolesnikoff were not caused by any fault or negligence on his part, but were caused solely by the negligence of the driver of the Army truck involved in said accident in operating his vehicle partly on the wrong side of the highway in the right-of-way of the oncoming civilian automobiles. Since, however, the evidence also shows that at the time of the accident the driver of the Army vehicle was using such vehicle without authority and for a personal mission of his own, there is no obligation on the part of the United States to compensate Mr. Kolesnikoff for the damages sustained by him. The Department of the Army, therefore, refrains from making any recommendation either for or against the enactment of H. R. 3359, but prefers to leave the matter of whether relief should be granted in this case to the equitable determination of the Congress. If in the light of the facts and circumstances the Congress should, nevertheless, consider this bill a meritorious one, the Department would have no objection to its enactment provided it should be amended to award to the claimant an amount not exceeding \$766 (\$713 for damage to automobile; \$3 for medical expenses actually incurred; and \$50 for personal injury), which, it is believed, would constitute a fair and reasonable settlement for all of the damages sustained by him as the result of this accident.

If this bill is favorably considered by the Congress it is recommended that the text thereof be amended to read as follows:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to Peter E. Kolesnikoff, of Chelmsford, Massachusetts, the sum of \$766, in full settlement of all claims against the United States for the damages sustained by him as the result of an accident involving an Army truck, which occurred on Route Numbered 110, at Westford, Massachusetts, on February 1, 1941: Provided, That no part of the amount appropriated in this Act in excess of 10 per centum thereof shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with this claim, and the same shall be unlawful, any contract to the contrary notwithstanding. Any person violating the provisions of this Act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding \$1,000."

The claimant has no remedy under the Federal Tort Claims Act (60 Stat. 842; 28 U. S. C. 921) for the reasons (1) that the accident out of which his claim arises occurred prior to January 1, 1945, and (2) that the driver of the Army vehicle which caused the accident was not acting within the scope of his employment at the time said accident occurred.

The Bureau of the Budget advises that there is no objection to the submission of this report.

Sincerely yours,

KENNETH C. ROYALL,
Secretary of the Army.

AFFIDAVIT

COMPANY A, FIRST ENGINEER BATTALION,
Fort Devens, Mass., February 7, 1941.

STATE OF MASSACHUSETTS,
County of Worcester:

Personally before me, the undersigned, authorized by law to administer oaths in cases of this character, appeared one, Mr. Peter E. Kolesnikoff, 291 Chelmsford Street, Chelmsford, Mass.

On February 1, 1941, while traveling on Route 110 toward Chelmsford, from Littleton in the town of Westford, my car was struck and badly damaged by an Army truck W-322164. At the time of the accident my car was traveling approximately 35 miles per hour.

I first noticed the truck coming toward me when it was about 500 feet in front of me and in the middle of the road. I was driving as far toward the right as the plowed snow would allow me, but the truck seemed to be coming closer toward our side and the next thing we knew the truck had hit our car on our left. With the impact the front wheels of my car locked and we swerved sharply to the left, across the road and into the field on the opposite side.

The itemized bill attached to this report is proof of damage to a new car; amount \$350.

Further the deponent sayeth not.

PETER E. KOLESNIKOFF,
291 Chelmsford Street, Chelmsford, Mass.

Sworn to and subscribed by me this 7th day of February 1941.

FRANK G. HUBBARD,
Second Lieutenant, First Engineer Battalion,
Investigating Officer.

CHELMSFORD, MASS., February 7, 1941.

To Mr. Peter Kolesnikoff:

RAY'S SERVICE STATION

| | |
|--|----------|
| 1 left front fender (prime) | \$11. 79 |
| 1 right front fender (prime) | 11. 79 |
| 1 left rear fender (prime) | 7. 69 |
| 1 bumper bar (front) | 5. 90 |
| 1 bumper bracket (front) | 3. 49 |
| 1 radiator shell (prime) | 13. 89 |
| 2 shell center moulding (top and bottom) | 1. 11 |
| 1 number plate holder (front) | . 51 |
| 1 left lower hood panel (prime) | 4. 69 |
| 1 left fender shield | 2. 13 |
| 1 left fender shield (lower) | 1. 53 |
| 1 left headlamp, complete | 10. 16 |
| 1 right headlamp (without retainer) | 9. 54 |
| 2 hub caps | 2. 56 |
| 1 left running board | 6. 92 |
| Fender well for 3 fenders | 1. 80 |
| 1 left front fender brace holder | . 62 |
| 1 radiator | 30. 24 |
| 1 radiator support assembly | 4. 31 |
| 1 wheel (prime) | 6. 08 |
| 1 bearing nut | . 11 |
| 1 thrust bearing washer | . 06 |
| 1 drum and hub | 6. 84 |
| Inner bearing cone rollers | 4. 05 |
| 1 hub dust seal | . 36 |
| Left king pin and bushings | 1. 04 |
| 1 left front wheel brake support assembly | 2. 15 |
| 1 steering knuckle arm | 1. 80 |
| 1 left tie rod assembly | 5. 13 |
| 1 lower control arm with bushing and pin right | 6. 67 |

RAY'S SERVICE STATION—Continued

| | |
|--|----------------|
| 1 pitman arm..... | \$1. 90 |
| 1 steering gear assembly..... | 14. 86 |
| 1 front motor support bracket..... | 1. 73 |
| 1 left upper control arm..... | 4. 36 |
| 1 left front upper control arm bar..... | 1. 28 |
| 1 upper control arm bearing..... | . 72 |
| 1 lower control arm and spring seat assembly..... | 4. 60 |
| 1 left front lower control arm bar..... | 1. 79 |
| 2 left front lower control arm bushings..... | . 82 |
| 1 left front control arm pin..... | . 62 |
| 1 steering knuckle support..... | 4. 87 |
| 1 steering knuckle, left..... | 5. 12 |
| Straighten and refinish left door..... | 10. 00 |
| Straighten and refinish left cowl panel..... | 8. 00 |
| Straighten and refinish rear portion body..... | 8. 00 |
| Straighten left front body post..... | 4. 00 |
| Straighten and refinish left front body panel..... | 8. 00 |
| Straighten left frame member..... | 10. 00 |
| Straighten front cross member..... | 10. 00 |
| Straighten running board support..... | 2. 00 |
| Refinish new left front fender..... | 6. 00 |
| Refinish new right front fender..... | 6. 00 |
| Refinish new left rear fender..... | 6. 00 |
| Refinish new radiator shell..... | 6. 00 |
| Completely aline front end..... | 9. 50 |
| Disassemble and assemble parts..... | 35. 00 |
| Adjust lights..... | . 50 |
| Total..... | 336. 63 |

Approximate estimate of repair to 1940 Plymouth Road King two-door sedan, registration No. 80188; unforeseen items not included.

I certify that to the best of my knowledge this estimate is correct.

(Signed by repairman.)



